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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Arizona Democratic Party,  
Plaintiff,

v.

Arizona Republican Party, Donald J. Trump  
for President, Inc., Roger J. Stone, Jr., and  
Stop the Steal, Inc.,  
Defendants.

No. CV-16-03752-PHX-JJT

**PLAINTIFF'S MEMORANDUM  
OF LAW IN SUPPORT OF ITS  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION**

A temporary restraining order (TRO) is urgently needed to protect the right of Arizona's minority voters to vote free from intimidation, harassment, and coercion. As explained below, the allegations in the accompanying Complaint and material presented with this motion justify immediate temporary relief in order to prevent irreparable harm. An injunction against Defendants' planned intimidation tactics is the only way to protect countless lawfully registered voters from harassment, threats, and intimidation that will interfere with their ability to vote in the rapidly approaching election.

Relief should be granted because: Plaintiff is likely to succeed on the merits of its claims under Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985(3); irreparable harm to Plaintiff, candidates, and voters will occur in the absence of immediate relief; the balance of equities tips in favor of barring Defendants from carrying out their plans to intimidate, harass, and suppress voters; and an injunction barring such flagrantly unlawful conduct is in the public interest.

1 *See Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014); *All. for the*  
2 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (noting that an injunction  
3 may issue under a “sliding scale” approach “so that a stronger showing of one element  
4 may offset a weaker showing of another,” for example where “serious questions going to  
5 the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor”).

## 6 **I. STATEMENT OF FACTS**

7 Donald J. Trump for President, Inc., Trump’s close adviser Roger J. Stone, Jr.,  
8 Stone’s organization Stop the Steal, Inc., and the Arizona Republican Party (“ARP”) are  
9 conspiring to threaten, intimidate, and thereby prevent Democratic and minority voters in  
10 urban neighborhoods from voting in the 2016 election. The stated goal of the Trump  
11 Campaign, as explained by an unnamed official to Bloomberg News on October 27, is to  
12 depress voter turnout among constituencies likely to vote for Democrats, including  
13 minorities—in the official’s words: “We have three major voter suppression operations  
14 under way.” Declaration of Sarah R. Gonski, Esq. (hereinafter “Gonski Decl.”) at Ex. 17.  
15 In recent weeks, Trump has sought to advance that goal by using the loudest microphone  
16 in the nation to implore his supporters to engage in unlawful intimidation at Arizona  
17 polling places. Trump’s exhortations have been amplified by direct and tacit assistance  
18 from the ARP and from Stone, who helped pioneer similar tactics in the 1980s before  
19 those efforts were blocked by the federal courts. *See* Gonski Decl. at Ex. 24. All have  
20 sought to organize, fund, and assist Trump’s supporters to carry out the conspiracy’s  
21 goals. Trump’s supporters have pledged to descend upon polling places in “certain areas”  
22 where many Democratic and minority voters live to inhibit their efforts to vote.

23 In the months leading up to the 2016 election, Trump has made an escalating series  
24 of statements, often racially tinged, suggesting that his supporters should intimidate  
25 voters—intimating that otherwise he will lose the election because of imagined voter  
26 fraud. Of course, voter fraud is practically nonexistent—but that has not stopped Trump  
27 from telling his supporters that certain people, in certain precincts, will vote “15 times”  
28 for Secretary Clinton. Gonski Decl. at Ex. 18. For example, Trump told a crowd in

1 Altoona, Pennsylvania in August that “I hope you people can ... not just vote on the 8th,  
2 [but] go around and look and watch other polling places and make sure that it’s 100-  
3 percent fine. . . . We’re going to watch Pennsylvania—go down to certain areas and  
4 watch and study—[and] make sure other people don’t come in and vote five times.”  
5 Gonski Decl. at Ex. 19. Ten days later, at an Ohio speech, Trump explained that he did  
6 not just mean that supporters should “watch”: “You’ve got to get everybody to go out and  
7 watch, and go out and vote,” Trump said. “And when [I] say ‘watch,’ you know what I’m  
8 talking about, right?” Trump has explained that his “watchers” should act in a capacity  
9 similar to law enforcement (i.e., as vigilantes). *Id.* Trump and Trump Campaign  
10 surrogates like Rudy Giuliani have told supporters that voters of color should be suspected  
11 of fraud. Gonski Decl. at Ex. 21. Trump has suggested that Latino voters are  
12 undocumented immigrants whom the federal government has allowed to “pour into this  
13 country” specifically to vote in the election. Gonski Decl. at Ex. 22.

14 Meanwhile, the Trump campaign published a signup form on its website for  
15 supporters to be “Trump Election Observers” to stop “Crooked Hillary From Rigging This  
16 Election,” further encouraging his supporters to join in a common plan to “watch” voters  
17 in “certain areas” of states like Arizona for voter fraud. Gonski Decl. at Ex. 3.

18 Trump now constantly repeats at rallies that the presence of fraud at the polls will  
19 prevent him from winning the November 8 election. His comments are consistently  
20 directed at Democratic-leaning communities in states like Arizona. At an October 29 rally  
21 in Phoenix, Trump repeated his claim that election is “rigged” against him and “the  
22 outcome is fixed.” He later elaborated that the election is “rigged” because of “voter  
23 fraud,” and instructed his supporters to “watch, watch, be careful, watch.”<sup>1</sup> Trump has  
24 further made clear: “This is what I mean when I say that our system is rigged. Be careful,  
25 watch for voter fraud.” Gonski Decl. at Ex. 12. Trump was introduced at the Phoenix by

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26 <sup>1</sup> Full Speech: Donald Trump Rally in Phoenix on October 29, 2016 at 20:47-  
27 20:50, 35:25-35:35, *available at* [https://www.youtube.com/watch?v=pf\\_2CGUSLHg](https://www.youtube.com/watch?v=pf_2CGUSLHg) (last  
28 accessed Nov. 1, 2016).

1 Joe Arpaio, the Sheriff of Maricopa County, who is under federal civil rights investigation  
2 for racial profiling of Latino Americans and has been charged with contempt of court for  
3 failing to comply with court orders in that case. *Id.*

4 Roger Stone, a key Trump advisor, has amplified Trump's message. Stone runs a  
5 website, through his organization, called "Stop The Steal" that is actively signing up  
6 Trump supporters to "volunteer" to fight "voter-fraud and election theft." Stop the Steal,  
7 <https://stopthesteal.org/> (last visited Oct. 31, 2016). #StoptheSteal is a popular hashtag  
8 among Trump supporters on Twitter, and Stone's group maintains an active Facebook  
9 presence. Stone and his associates, including Stop the Steal Inc., have also widely  
10 disseminated messages via websites such as Stop the Steal and through social media under  
11 hashtags such as #stopthesteal. One image states: "HILLARY CLINTON CHEATED  
12 AND STOLE THE PRIMARY FROM BERNIE . . . WE THE PEOPLE CAN STOP HER  
13 FROM STEALING THE GENERAL." Gonski Decl. at Ex. 25. Through these and other  
14 messages, Mr. Stone has encouraged Trump supporters to engage in voter intimidation.

15 Stone and Stop the Steal Inc. are actively recruiting Trump supporters for "exit  
16 polling," specifically targeting Democratic-leaning cities with large minority populations.  
17 *See* Gonski Decl. at Ex. 4. Stone claimed in an appearance on the show "Info Wars" that  
18 the operation was necessary to stop Clinton from rigging the election, and that his plan  
19 was to present the results of his "exit polling" activities, conducted by his "army" of  
20 "Infowar Warriors" directly to Trump within hours of the election being over.<sup>2</sup> As of  
21 November 1, 2016, Stone's website claimed to have organized 2,603 volunteers to engage  
22 in this "exit polling" operation. That number includes at least 107 volunteers signed up to  
23 participate throughout Arizona. *See* <https://stopthesteal.org/states/Arizona/>. Stone's  
24 purported polling exercise serves no legitimate purpose. Stone does not run a polling  
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26 <sup>2</sup> Media Matters, "Trump Ally Roger Stone to Alex Jones: 'We Need An Army Of  
27 Infowar Warriors To Help Us' Conduct 'Exit Polls' At Polling Places," *available at*  
28 <http://mediamatters.org/video/2016/10/25/trump-ally-roger-stone-alex-jones-we-need-army-infowar-warriors-help-us-conduct-exit-polls-polling/214105>.

1 business, and legitimate “exit polling” cannot focus on Democratic-leaning or majority-  
2 minority districts—rather, legitimate exit polling by necessity must include monitoring  
3 contested and competitive districts rather than areas that vote overwhelmingly for one  
4 party. *See* Expert Report and Declaration of Mark S. Mellman at 1 (“The polling that  
5 [Stone] plans to conduct is unlikely to produce unbiased, reliable results, and, moreover,  
6 does not appear to be designed to meet such ends.”). Stone’s “exit polling” activities  
7 appear to be aimed chiefly at majority-minority communities, such as certain majority-  
8 minority communities in Arizona, with the purpose or effect of intimidating non-white  
9 persons from voting. *See id.* at 7 (Stone’s “exit polling strategy appears only designed to  
10 intimidate voters in an attempt to influence the election and suppress the vote”).

11 Stone has also recruited volunteers to watch polling places through a program  
12 called Vote Protectors. The Vote Protectors website permits any volunteer to download  
13 and print official-looking ID badges, and provides scripts for volunteers that instruct them  
14 on how to interrogate voters on Election Day. Gonski Decl. at Ex. 23. Stone’s volunteers  
15 are permitted to tally up votes on the Stop the Steal website—for Trump or any other  
16 candidate—without any proof that they had spoken to voters or visited a polling site. *See*  
17 “Popular Vote (Citizen Exit Polls),” <http://stopthesteal.org> (last accessed Oct. 31, 2016).  
18 Vote Protectors and Stop the Steal discontinued some, but not all, of these practices after  
19 they were exposed by a national media outlet. Vote Protectors continues to encourage  
20 volunteers it styles “citizen journalists” to “approach voters at the polls,” identify  
21 themselves as “reporting for Vote Protectors,” and ask them about election fraud.

22 That voter fraud is a myth does not prevent many people—particularly those who  
23 are listening most closely to the Republican National Committee (“RNC”), Trump, and  
24 surrogates such as Stone—from believing it is real. As a recent poll showed, 69% of  
25 Trump’s supporters (but less than half of all voters) believe individual voter fraud happens  
26 “very often” or “somewhat often.” Gonski Decl. at Ex. 28. This widespread belief,  
27 despite a lack of supporting evidence, has been stoked for decades by certain elements of  
28 the Republican Party, including Stone and Trump’s allies in the so-called “alt-right”

1 media ecosystem, such as the Breitbart website run until recently by Trump Campaign  
2 CEO Steve Bannon. Gonski Decl. at Ex. 26. Stone, Stop the Steal, and the Trump  
3 Campaign fan these flames by distributing messages via social media and elsewhere  
4 falsely claiming the election will be “rigged” by “illegals.” Gonski Decl. at Ex. 5.

5 Trump’s calls for unlawful vigilantism to stop purported voter fraud advance a  
6 coordinated effort to harass and intimidate voters at the polls. Voter intimidation efforts  
7 aimed at suppressing minority voters are often “ostensibly aimed at combatting voter  
8 fraud.” *Ne. Ohio Coal. for the Homeless v. Husted*, No. 2:06-cv-896, 2016 WL 3166251,  
9 at \*28 (S.D. Ohio June 7, 2016). Defendants are engaged in a concerted effort to engage  
10 in voter intimidation. As the Republican Party’s nominee for President, Trump and his  
11 campaign coordinate closely with the RNC and ARP on a wide variety of matters,  
12 including overall campaign strategy, public messaging, voter outreach, and field  
13 operations. On May 17, 2016, the RNC created a joint fundraising committee with the  
14 Trump Campaign specifically to fund the Trump Campaign and its operations. Gonski  
15 Decl. at Ex. 1. The Trump Campaign has “relinquished control over many of its tactical  
16 decisions” to the RNC. Gonski Decl. at Ex. 17. Shortly after Trump became the  
17 Republican nominee, the RNC and the Trump Campaign met to discuss “the merger.” *Id.*  
18 The Trump Campaign and RNC “negotiated a partnership” in which the RNC “buil[t]  
19 assets and infrastructure and the nominee gets to benefit from it.” *Id.* The Trump  
20 Campaign has decided largely to refrain from setting up a parallel layer of offices and  
21 staff in Arizona and elsewhere, as past Republican Party nominees have done. Instead,  
22 the Trump Campaign is relying predominantly on the RNC and ARP to manage get-out-  
23 the vote operations in contested states such as Arizona. *See* Gonski Decl. at Ex. 20.

24 The Trump Campaign’s coordination with the RNC and ARP extends to efforts to  
25 monitor polls for purported voter fraud. Trump’s running mate, Governor Mike Pence,  
26 confirmed the Trump Campaign is working with the RNC and state Republican parties on  
27 ballot security measures. At an August 3, 2016 town hall rally in Denver, Colorado,  
28 Pence was asked “how is the Trump-Pence campaign going to . . . prevent” Hillary



1 Clinton from “steal[ing] this election.” Pence responded: “the Trump campaign and the  
2 Republican National Committee are working very, very closely with state governments  
3 and secretaries of states all over the country to ensure ballot integrity. . . . We are working  
4 hard all over the country, the Republican National Committee is working all over the  
5 country, but I would encourage everyone within the sound of my voice, get involved,  
6 participate, be a poll worker on election day . . . be a part of that process, and uphold the  
7 integrity of one person one vote in America.”<sup>3</sup>

8 The RNC has delegated “ballot security” initiatives to its agents in the state parties.  
9 For example, Robert Graham, the chair of the ARP, recently remarked that individuals  
10 who are designated as Republican poll watchers “will be the eyes and ears of the GOP” at  
11 polling places. Despite acknowledging that Arizona law limits what a party-designated  
12 observer can do—including restrictions on photography and talking to voters—Graham  
13 asserted that “they’re still free to follow voters out into the parking lot, ask them  
14 questions, take their pictures and photograph their vehicles and license plate” as long as  
15 they are more than 75 feet outside a polling place.<sup>4</sup> Gonski Decl. at Ex. 2. The ARP’s  
16 official spokesperson, Tim Sifert, has echoed that call, encouraging “good citizens” who  
17 suspect voter fraud “to do something about it,” such as to approach voters outside the  
18 polls, question them, and take pictures and videos of them and their vehicles. *Id.*; Gonski  
19 Decl. at Ex. 29.

20 Just recently, Trump’s campaign manager Kellyanne Conway confirmed that the  
21 Trump campaign is “actively working with” the RNC and other branches of the  
22 Republican Party apparatus, including the ARP, to “monitor precincts around the  
23 country.” Gonski Decl. at Ex. 9. The RNC and ARP continued this close coordination  
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25 <sup>3</sup> *Pence Denver Rally Town Hall*, [http://trumptube.tv/donald-trump-rally-speech-](http://trumptube.tv/donald-trump-rally-speech-video/video/pence-live-stream-town-hall-8-3-16/)  
26 [video/video/pence-live-stream-town-hall-8-3-16/](http://trumptube.tv/donald-trump-rally-speech-video/video/pence-live-stream-town-hall-8-3-16/), at 16:22-17:27 (last acc. Oct. 28, 2016).

27 <sup>4</sup> Robert Graham is an RNC member and its agent. On October 10, 2016, Graham  
28 issued a press release stating: “It is my responsibility, as a member of the Republican  
National Committee . . . to work with passion, integrity and restlessness to stop Hillary  
Clinton and elect Donald J. Trump.” Gonski Decl. at Ex. 8.

1 after Trump's widespread and racially charged pleas to his supporters to engage in voter  
2 intimidation in areas like Phoenix, which contains large communities of racial minorities.  
3 The Trump Campaign also recently distributed talking points to Republican Party  
4 surrogates directing them to "make points on rigged system," and encouraging them to  
5 claim "an increase in unlawful voting by illegal immigrants." Gonski Decl. at Ex. 10.

6 Trump's supporters are responding to his calls to engage in voter intimidation. The  
7 *Boston Globe* has reported on Trump supporters who plan to engage in unlawful voter  
8 intimidation, and who understand themselves to be doing so at Trump's behest:

9 "Trump said to watch your precincts. I'm going to go, for sure," said Steve  
10 Webb, a 61-year-old carpenter from Fairfield, Ohio. "I'll look for . . . well,  
11 it's called racial profiling. Mexicans. Syrians. People who can't speak  
12 American," he said. "I'm going to go right up behind them. I'll do  
everything legally. I want to see if they are accountable. I'm not going to  
do anything illegal. I'm going to make them a little bit nervous."

13 Gonski Decl. at Ex. 6. Similarly, Harry Miller, purportedly of Palm Beach, Florida,  
14 tweeted in response to Trump's calls for election observers that he would be "wear'n red  
15 at polls. . . . We gonna be watch'n fer shenanigans . . . haul ya away." Gonski Decl. at Ex.  
16 7. The tweet included a picture of a pickup truck and a person-sized cage built into the  
17 bed, surrounded by American flags. *See id.* Miller has over 20,000 Twitter followers and  
18 tweets almost exclusively about Trump, Secretary Clinton, and racially-charged political  
19 themes such as deporting "Muzzys."

## 20 **II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS**

### 21 **a. Defendants Have Violated Section 11(b) Of The Voting Rights Act.**

22 Plaintiff is likely to prevail on its claim that Defendants have violated Section  
23 11(b) of the Voting Rights Act, codified at 52 U.S.C. § 10307(b), which provides in  
24 relevant part: "No person, whether acting under color of law or otherwise, shall  
25 intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for  
26 voting or attempting to vote." 52 U.S.C. § 10307(b).<sup>5</sup> Section 11(b) was passed as part of

27 <sup>5</sup> Section 11(b) affords a private right of action. *See Allen v. State Bd. of Elections,*  
28



the Voting Rights Act “to banish the plight of racial discrimination in voting,” *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966), but Congress intentionally drafted Section 11(b) “not [to] require proof that racial discrimination motivated the intimidation, threats, or coercion,” *Willingham v. Cnty. of Albany*, 593 F. Supp. 2d 446, 462 (N.D.N.Y. 2006).<sup>6</sup> Section 11(b) “on its face prohibits *any* intimidation, threat, or coercion, whether done by a public official or by a private individual.” *Whatley v. Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968); *see Jackson v. Riddell*, 476 F. Supp. 849, 859 (N.D. Miss. 1979) (Section 11(b) “is to be given an expansive meaning”).

The operative words of Section 11(b)—to “intimidate,” “threaten,” and “coerce,” or to attempt to do so—should be given their commonly understood meaning. *See, e.g.,* Merriam Webster (“intimidate”: “to make timid or fearful”; “to compel or deter by or as if by threats”); *id.* (“threaten”: “to utter threats against”; “to hang over dangerously”; “to cause to feel insecure or anxious”); *id.* (“coerce”: “to restrain or dominate by force”; “to compel to an act or choice”; “to achieve by force or threat”).<sup>7</sup>

Section 11(b)’s reach is not restricted to overt acts of violence. Courts assessing comparable language in other civil rights statutes have held that “intimidating” and “threatening” includes subtler conduct. For instance, the Ninth Circuit found that it constituted “intimidation” to send a mass mailing to 14,000 newly registered voters with Hispanic surnames warning them that if they voted in the election, their personal information would be collected and made available to organizations that were “against immigration.” *United States v. Nguyen*, 673 F.3d 1259, 1261 (9th Cir. 2012) (interpreting a criminal voter intimidation provision of the California election code). As the Ninth Circuit held, “intimidation” is “not limited to displays or applications of force, but *can be achieved through manipulation and suggestion*,” including “through subtle, rather than

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393 U.S. 544, 555-56 & n.18 (1969); *see also* 28 U.S.C. § 1343(a)(4).

<sup>6</sup> *See Cameron v. Johnson*, 262 F. Supp. 873, 884 n.9 (S.D. Miss. 1966) (same); H.R. Rep. No. 89-439, at 30 (1965) (“The prohibited acts of intimidation need not be racially motivated.”), *as reprinted in* 1965 U.S.C.C.A.N. 2437, 2462.

<sup>7</sup> Available at <http://www.merriam-webster.com/dictionary>.

1 forcefully coercive means.” *Id.* (emphasis added). Similarly, the Seventh Circuit found  
2 that conduct involving the writing of a racial slur on property was proscribed under the  
3 Fair Housing Act’s provision prohibiting “intimida[tion].” *Halprin v. Prairie Single*  
4 *Family Homes of Dearborn Park Ass’n*, 388 F.3d 327, 330 (7th Cir. 2004) (Posner, J.).

5 Courts assessing voter intimidation claims have looked to whether the conduct  
6 contemplated by Defendants would reasonably intimidate, threaten, or coerce voters. For  
7 example, during the 2004 election cycle, Senator Daschle argued that certain conduct  
8 committed by Republican candidate John Thune, the South Dakota Republican Party, and  
9 their agents violated Section 11(b): “[f]ollowing Native American voters at [a] polling  
10 place . . . and standing two to three feet behind Native American voters, and ostentatiously  
11 making notes”; “[f]ollowing Native American voters out to their cars after they have  
12 voted, walking up to their vehicles, and writing down their license plate numbers”; and  
13 “[h]aving a loud conversation in a polling place, where Native Americans were voting,  
14 about Native Americans who were prosecuted for voting illegally in Minnesota.” Gonski  
15 Decl. at Ex. 14 (*Daschle v. Thune*, Complaint at 5-6, Civ. 04-4177 (D.S.D., Nov. 1,  
16 2004)). Daschle claimed that “[t]he persons carrying out these activities are part of a large  
17 group of Republican Thune supporters who have come to South Dakota from across the  
18 country, and who are poised to repeat the same conduct in Native American voting places  
19 across South Dakota . . . on Election Day.” *Id.* at 6. The district court granted a  
20 temporary restraining order and found Daschle was “likely to succeed” on his Section  
21 11(b) claim, “as the Court finds that there was intimidation particularly targeted at Native  
22 American voters . . . by persons who were acting on behalf of John Thune.” Gonski Decl.  
23 at Ex. 13 (TRO at 2, Civ. 04-4177 (D.S.D., Nov. 2, 2004)). Although Daschle alleged  
24 intentional intimidation, the court explained that “[w]hether the intimidation was intended  
25 or simply the result of excessive zeal is not the issue, as the result was the intimidation of  
26 prospective Native American voters.” *Id.*; see *United States v. Clark*, 249 F. Supp. 720,  
27 728 (S.D. Ala. 1965) (the “inevitable effect” of challenged conduct would deter voters).

28 The allegations in the Complaint and material supplied with this motion show that

1 the Trump Campaign, Stone, and their agents are engaged in a concerted effort to  
2 intimidate, threaten, and coerce lawful voters from exercising their right to vote. The  
3 ARP has embraced these suppression efforts. The Chair of the ARP, Robert Graham has  
4 called on his fellow Trump supporters to be the ARP's "eyes and ears" at polling places,  
5 directing them to "follow voters out into the parking lot, ask them questions, take their  
6 pictures and photograph their vehicles and license plate." Gonski Decl. at Ex. 2. This is  
7 textbook voter intimidation that violates Section 11(b). *See Daschle*, TRO at 2.

8 Plaintiffs need not show that Defendants' voter suppression efforts have been  
9 successful in order to obtain injunctive relief. Even if those efforts have not yet achieved  
10 success, Defendants have already *attempted* to induce fear and anxiety among minority  
11 voters in Arizona, and likewise taken steps designed to prevent minority voters from  
12 voting. *See supra*, at 3-5; Gonski Decl. at Ex. 1, 4, 17, 19. As described, Trump  
13 supporters are already responding to the candidate's call to intimidate voters. *See supra* at  
14 7-8. Such planned conduct is indistinguishable from the allegations that the *Daschle* court  
15 found more than sufficient to constitute intimidation and threats in violation of Section  
16 11(b) and therefore support a TRO. Plaintiffs need not wait for intimidators to arrive at  
17 polling stations in Arizona on Election Day—Section 11(b) authorizes relief against  
18 Defendants for attempting to fund, organize, and support their arrival.

19 **b. Plaintiff Is Likely To Show Defendants Violated Klan Act.**

20 For similar reasons, Plaintiff is likely to prevail on its claim that Defendants have  
21 violated the Ku Klux Klan Act of 1871 (the "Klan Act"). The relevant provision of the  
22 Klan Act, 42 U.S.C. § 1985, creates liability for several kinds of conspiracies. *Bretz v.*  
23 *Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir. 1985) (en banc); *United Bhd. of Carpenters &*  
24 *Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 839 n.1 (1983) (Blackmun, J.,  
25 dissenting). Plaintiff's claim arises under § 1985(3)'s provision barring conspiracies to  
26 suppress voters, which provides: "[I]f two or more persons conspire to prevent by force,  
27 intimidation or threat, any citizen who is lawfully entitled to vote, from giving his support  
28

1 or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified  
2 person as an elector for President or Vice President, or as a Member of Congress of the  
3 United States; or to injure any citizen in person or property on account of such support or  
4 advocacy,” and “one or more persons engaged” in that conspiracy commit an act in  
5 furtherance of the conspiracy that injures a person or deprives that person of a federal  
6 right, “the party so injured or deprived may have an action . . . .” 42 U.S.C. § 1985(3).

7 The Ninth Circuit has referred to this type of § 1985(3) conspiracy as one “to  
8 interfere with federal elections.” *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.3 (9th Cir.  
9 1985) (en banc). And the Supreme Court has explained that the correct interpretive  
10 approach to “Reconstruction civil rights statutes” is “to accord them a sweep as broad as  
11 their language.” *Griffin*, 403 U.S. at 97. A straightforward reading of the statutory text,  
12 coupled with case law interpreting the Klan Act, makes clear that Plaintiff’s claim in this  
13 case is likely to succeed.<sup>8</sup> In construing § 1985(3) conspiracy claims under the statute’s  
14 first clause, the Supreme Court explained that:

15 the plaintiff must allege and prove four elements: (1) a conspiracy; (2) for  
16 the purpose of depriving, either directly or indirectly, any person or class of  
17 persons of the equal protection of the laws, or of equal privileges and  
18 immunities under the laws; and (3) an act in furtherance of the conspiracy;  
(4) whereby a person is either injured in his person or property or deprived  
of any right or privilege of a citizen of the United States.

19 *Scott*, 463 at 828-29. It follows that to make out a violation of the latter part of § 1985(3)  
20 at issue here, a plaintiff must allege and prove: (1) a conspiracy; (2) to prevent a lawful  
21 voter from supporting a candidate in a federal election by force, intimidation, or threat;  
22 and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his  
23 person or property or deprived of any right or privilege of a citizen of the United States.

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25 <sup>8</sup> Plaintiff is not required to prove that Defendants are motivated by racial or other  
26 class-based animus, as is required for a claim for violations of the other two conspiracy  
27 bars in § 1985(3). See *Kush v. Rutledge*, 460 U.S. 719, 721 (1983) (analogizing the anti-  
28 voter suppression conspiracy bar to 42 U.S.C. § 1985(2), which does not require a racial  
or other class-based animus). But if it were required, the explicit targeting of minority  
areas and voters is sufficient to demonstrate a likelihood of success on that aspect as well.

1 First, Plaintiff is likely to succeed on the merits of its claim that Defendants have  
2 engaged in a conspiracy. “A civil conspiracy is a combination of two or more persons  
3 who, by some concerted action, intend to accomplish some unlawful objective for the  
4 purpose of harming another which results in damage.” *Lacey v. Maricopa Cty.*, 693 F.3d  
5 896, 935 (9th Cir. 2012). As the Ninth Circuit explained:

6 To be liable, each participant in the conspiracy need not know the exact  
7 details of the plan, but each participant must at least share the common  
8 objective of the conspiracy. A defendant’s knowledge of and participation  
9 in a conspiracy may be inferred from circumstantial evidence and from  
evidence of the defendant’s actions.

10 *Id.* Plaintiff has alleged facts likely to prove that Defendants share the “common  
11 objective” to suppress voting by Democratic, and predominantly non-white, voters in the  
12 2016 Election. *See supra*, at 2-8; Gonski Dec. at Ex. 4, 9; 17, 23. Trump’s running mate,  
13 Indiana Governor Mike Pence, admitted in public that “the Trump Campaign and the  
14 Republican National Committee are working very very closely . . . all over the country to  
15 ensure ballot integrity.” *See supra* at 6. Defendants have not only agreed on a common  
16 plan; they are boasting about it in public, and seeking to recruit others.<sup>9</sup>

17 Second, Plaintiff will likely prove the conspiracy is directed at preventing lawful  
18 voters from voting “by force, intimidation, or threat.” For the reasons laid out above,  
19 Defendants’ efforts are plainly designed to threaten, coerce, and intimidate minority and  
20 Democratic voters, and to encourage supporters to engage in activities barred in Arizona.

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21 <sup>9</sup> Defendants cannot rely on the First Amendment for permission to intimidate and  
22 harass voters, as “poll watching is not a fundamental right which enjoys First Amendment  
23 protection.” *Dailey v. Hands*, No. 14-cv-423-KD-M, 2015 WL 1293188, at \*4 (S.D. Ala.  
24 Feb. 20, 2015) *adopted* Mar. 23, 2015; *see DNC v. RNC*, 671 F. Supp. 2d 575, 596 (D.N.J.  
25 2009) (rejecting as “meritless” the argument that consent decree bar on RNC “ballot  
26 security activities” “infringes on activity protected by the First Amendment”), *aff’d*, 673  
27 F.3d 192 (3d Cir. 2012); *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 364 (S.D.N.Y. 2007)  
28 (“poll watching . . . has no distinct First Amendment protection”); *Turner v. Cooper*, 583  
F. Supp. 1160, 1162 (N.D. Ill. 1983) (same). The “position of poll-watcher,” rather, is “a  
mere creature of state statute,” *Cotz*, 476 F. Supp. 2d at 364, so any individual’s supposed  
“right” to be a poll-watcher “derive[s] solely from state law,” *Turner*, 583 F. Supp. at  
1162. Moreover, any hypothetical First Amendment right to engage in poll watching  
must give way to the compelling state interest in preventing voter intimidation.

1 Third, each co-conspirator has performed an act in furtherance of that conspiracy.  
2 Trump regularly issues warnings of vote-rigging and calls to “watch” “certain areas” of  
3 the country. Gonski Decl. at Ex. 11. Defendant ARP has undertaken concrete steps to  
4 advance the objectives, including by organizing poll watchers, encouraging Trump  
5 supporters to “follow” and harass voters, and supplying the Trump Campaign with  
6 personnel and resources to further its efforts. *See supra* at 6-7. Defendants Stone and  
7 Stop the Steal, Inc. have similarly adopted the objective and have taken concrete steps to  
8 advance it, including organizing an “exit polling” operation targeted at minority voters in  
9 locations including Phoenix, and recruiting “vote protectors” to patrol polling places  
10 where they believe voters are likely to vote for Secretary Clinton. Gonski Decl. at Exs. 4,  
11 27. Each of these acts, and many others, has furthered the conspiracy to intimidate voters.

12 Finally, each of those acts has injured Plaintiff in its capacity as the Democratic  
13 Party organization in the State of Arizona, by harming its prospects in the election, and by  
14 depriving the lawful voters whose interests it represents of their legal right to vote without  
15 intimidation. In the absence of immediate relief, thousands of voters, if not more, will be  
16 deprived of their right to vote on account of Defendants’ intimidation.

17 **III. PLAINTIFF WILL SUFFER IRREPARABLE HARM IN THE**  
18 **ABSENCE OF PRELIMINARY RELIEF**

19 In the absence of injunctive relief, Defendants’ plans to intimidate Democratic and  
20 minority voters are likely to succeed, causing irreparable harm to Plaintiff. *See, e.g.,*  
21 *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (citing *Crawford*  
22 *v. Marion County Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (“The Democratic Party  
23 also has standing to assert the rights of those of its members who will be prevented from  
24 voting by the new law.”)). U.S. political history suggests that Defendants’ schemes are  
25 neither anomalous nor unthreatening—to the contrary, voter intimidation efforts have  
26 been known to compromise the integrity of both federal and state elections. *See, e.g., Ne.*  
27 *Ohio Coal. for the Homeless*, 2016 WL 3166251, at \*28 (“Poll watching, . . . although  
28 ostensibly aimed at combatting voter fraud, has a pernicious history of intimidation of



1 minority voters.”); *DNC v. RNC*, 671 F. Supp. 2d 575, 578-79 (D.N.J. 2009) (“Voter  
2 intimidation presents an ongoing threat to the participation of minority individuals in the  
3 political process, and continues to pose a far greater threat to the integrity of that process  
4 than” alleged in-person “voter fraud”), *aff’d*, 673 F.3d 192 (3d Cir. 2012).

5 Defendants seek to intimidate and suppress Arizona voters, and “[i]t is clear that  
6 abridgment of the right to vote constitutes an irreparable injury.” *Sanchez v. Cegavske*,  
7 No. 16-cv-00523 MMD WGC, 2016 WL 5936918, at \*3 (D. Nev. Oct. 7, 2016); *see*  
8 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established that  
9 deprivation of constitutional rights unquestionably constitutes irreparable injury.”).<sup>10</sup>

#### 10 **IV. THE BALANCE OF EQUITIES FAVORS PLAINTIFF**

##### 11 **a. Preventing Voter Intimidation Is A Strong Federal Interest.**

12 “[V]oter intimidation and coercion [are] . . . obvious harm[s] that federal law  
13 strongly and properly prohibits.” *United States v. Madden*, 403 F.3d 347, 352 (6th Cir.  
14 2005) (Boggs, C.J., concurring in part and dissenting in part). The constitutional interest  
15 at stake in this litigation is the voters’ “most precious” “right . . . , regardless of their  
16 political persuasion, to cast their votes effectively” and free of intimidation. *Williams v.*  
17 *Rhodes*, 393 U.S. 23, 30-31 (1968). The interest in “protecting voters from confusion and  
18 undue influence” is “compelling,” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality  
19 op.), and laws that protect voters from intimidation safeguard the “fundamental political  
20 right . . . preservative of all rights,” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The  
21 Constitution secures the “citizen’s right to a vote free of arbitrary impairment by state  
22 action,” including intimidation by poll-watchers. *Baker v. Carr*, 369 U.S. 186, 208 (1962).

23 The “right” to engage in poll-watching is a state-created interest, poll-watching in  
24 federal elections is permissible only insofar as it complies with federal laws proscribing

25 <sup>10</sup> Courts find irreparable harm where, as here, the right to vote is threatened, even if  
26 the impingement is not yet complete. *See, e.g., Lucas v. Townsend*, 486 U.S. 1301, 1305  
27 (1988) (granting injunction enjoining a bond referendum election because “[p]ermitting  
28 the election to go forward [without statutory protection] would place the burdens of inertia  
and litigation delay on those whom the statute was intended to protect.”)

1 voter intimidation. See 42 U.S.C. § 1985(3); 52 U.S.C. § 10307(b); *Arizona v. Inter*  
2 *Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2257 (2013) (“the Elections Clause  
3 empowers Congress to regulate *how* federal elections are held”). And, as discussed, even  
4 activities that comply with state election procedures violate Section 11(b) where their  
5 purpose and effect is to interfere with the right to vote. See *Katzenbach*, 250 F. Supp. at  
6 348 (noting that “acts otherwise lawful may become unlawful and be enjoined under  
7 [section 11(b)] if the purpose and effect of the acts is to interfere with the right to vote”).

8 **b. Widespread Or Systemic Voter Fraud Is A Myth.**

9 The claimed rationale for the conspiracy in which Defendants are engaged is to  
10 combat alleged “voter fraud.” But widespread voter fraud is a myth. One recent study  
11 discovered only “31 credible incidents” of in-person voter fraud – out of *one billion* votes  
12 cast. Gonski Decl. at Ex. 16. The actual frequency of substantiated claims of voter fraud  
13 reveal that mass coordinated efforts to combat it are misguided at best and pretextual at  
14 worse, with the true purpose to suppress voter turnout. Courts that have examined the  
15 evidence have concluded that widespread voter fraud does not exist. In a challenge to  
16 Pennsylvania’s voter ID law, for example, “[t]he parties [we]re not aware of any incidents  
17 of in-person voter fraud in Pennsylvania and d[id] not have direct personal knowledge of  
18 in person voter fraud elsewhere. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014  
19 WL 184988, at \*57 (Pa. Commw. Ct. Jan. 17, 2014). A federal judge in Wisconsin has  
20 similarly observed that “[t]he Wisconsin experience demonstrates that a preoccupation  
21 with mostly phantom election fraud leads to real incidents of disenfranchisement, which  
22 undermine rather than enhance confidence in elections, particularly in minority  
23 communities.” *One Wis. Inst. v. Thomsen*, No. 15-civ-324 (JDP), 2016 WL 4059222, at  
24 \*2 (W.D. Wis. July 29, 2016).<sup>11</sup>

25 <sup>11</sup> See also, e.g., Gonski Decl. at Ex. 15 (*Brakebill v. Jaeger*, No. 16-civ-00008 (DLH),  
26 Dkt. No. 50, Aug. 1, 2016) (“The undisputed evidence before the Court reveals that voter  
27 fraud in North Dakota has been virtually non-existent.”); *Veasey v. Abbott*, 830 F.3d 216,  
28 238 (5th Cir. 2016) (“[T]he evidence before the Legislature was that in-person voting . . .  
yielded only two convictions for in-person voter impersonation fraud out of 20 million

## V. A PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST

The preliminary relief that Plaintiff seeks would clearly advance the public interest by enforcing federal law. As explained above, voter intimidation is expressly prohibited by Section 11(b) of the Voting Rights Act, 52 U.S.C. § 10307(b), and the Klan Act, 42 U.S.C. § 1985(3). Plaintiff's requested injunctive relief does no more than to effectuate the mandate of federal law. Plaintiff's requested relief would also further compliance with Arizona laws that protect Arizona's voters from vigilante poll watchers' unlawful interference with their votes. *See* Ariz. Rev. Stat. § 16-1013(A).

"In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights, including the voting and associational rights of . . . candidates, and their potential supporters." *Hooks*, 121 F.3d at 883-84. "By definition, [t]he public interest . . . favors permitting as many qualified voters to vote as possible." *League of Women Voters*, 769 F.3d at 247; *see Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (the public has a "strong interest in exercising the fundamental political right to vote"). Against a backdrop of widespread past and threatened future voter intimidation and minimal evidence of voter fraud, Defendants must be enjoined from engaging in conduct that threatens the most basic right in American democracy—the right of voters to cast their votes free of coercion and intimidation. "[O]ther rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

## VI. CONCLUSION

This Court should grant Plaintiff's motion for preliminary relief.

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votes cast in the decade leading up to SB 14's passage."); *League of Women Voters*, 769 F.3d at 246 ("North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court's portrayal of the facts suggests that those are anything other than merely imaginable."); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194 (2008) ("The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history."); *Frank v. Walker*, 17 F. Supp. 3d 837, 848 (E.D. Wis. 2014) ("there have been zero incidents of in-person voter-impersonation fraud in Wisconsin during recent elections."); *Lee v. Va. State Bd. of Elections*, No. 15-cv-357 (HEH), 2016 WL 2946181, at \*23 (E.D. Va. May 19, 2016) ("evidence of actual voter impersonation-type fraud was scant").

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Respectfully submitted,

s/ Sarah R. Gonski

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*\* Applications for Admission Pro Hac Vice  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Sarah R. Gonski